

ATEX TECHNOLOGIES, INC.,)
))
Plaintiff,)
))
v.) **1:08CV140**
))
ANTHONY J. WEST,)
))
Defendant.)

Defendant Anthony J. West has this date filed an “Emergency Motion to Compel and for a Protective Order,” invoking Rules 26 and 37 of the Federal Rules of Civil Procedure. Defendant informs the Court that the motion is filed *ex parte*. Defendant seeks relief from expedited discovery ordered by the state superior court before this case was removed to this Court. The superior court also entered a temporary restraining order directed at Defendant, and set a March 10, 2008, hearing date for a hearing on continuation of the TRO.

The Court will not entertain an *ex parte* motion such as that filed by Defendant. No rule provides for *ex parte* proceedings in circumstances such as those before the Court. The Court will proceed with Defendant's motions only after proper service upon Plaintiff and an opportunity for Plaintiff to respond.

Accordingly, **IT IS ORDERED** that Defendant shall immediately serve his emergency motion upon Plaintiff. Plaintiff shall respond to the motion by 5:00 p.m. Friday, March 7, assuming that Defendant accomplishes service of the motion by noon on March 4. The Court enters no order on the emergency motion at this time, and the motion remains pending before the Court. The Court notes for the benefit of the parties that Rule 32(a)(3) provides that “nor shall a deposition be used against a party who, having received less than 11 days notice of deposition, has promptly upon receiving such notice filed a motion for a protective order under Rule 26(c)(2) requesting that the deposition not be held . . . and such motion is pending at the time the deposition is held.”

The TRO entered by the state court should be considered by this Court on or before March 10. The parties will be notified by the Clerk of further scheduling in the matter.

/s/ P. Trevor Sharp
United States Magistrate Judge

Date: March 3, 2008